

Legal & Policy Advisory Group Meeting

May 28, 2013 2:30-4p

Name	Organization
Jacqueline Raymond	Brigham and Women's Hospital
Adam Tapply	Center for Health Information and Analysis
Amanda Littell-Clark	University of Massachusetts Medical School
Claudia Boldman	Information Technology Division
Liz Fluet	MA Association of Health Plans
Henry J. Och	Lowell Community Health Center
Kathleen Snyder	EOHHS Legal
Diane Stone	Stone and Heinhold Associates
Gavi Wolfe	American Civil Liberties Union of Massachusetts
Amanda Cassel-Kraft	MassHealth
Laurance Stuntz	MeHI
Support Staff	Massachusetts eHealth Collaborative
Micky Tripathi	Massachusetts eHealth Collaborative
Mark Belanger	Massachusetts eHealth Collaborative
Erich Schatzlein	Massachusetts eHealth Collaborative

Review of Materials and Discussion

Project Updates

- Mass HIway Phase 2 Timeline Update (Slide 2)
 - The group reviewed the Phase 2 timeline. See slide for full timeline updates. Major milestones include: CMS has approved the IAPD, and Public Health interfaces are either live or in testing.
- Current Status Update (Slide 3)
 - Organizations have been connected previously in a technical manner, but very few transactions were crossing the Mass HIway. Currently, transaction volume is growing substantially and should further increase with the start of the MeHI HIway Implementation Grant Program. Hundreds of thousands of transactions have crossed the HIway in the past month, including large volumes of transactions from Tufts, Network Health, MAeHC, and BIDMC.
 - In May alone the HIway has transacted: 500K+ discharge/ED summaries and HL7 labs from Tufts Medical Center to Network Health
 - 40K+ CCDs from BIDMC to MAeHC Quality Data Center
 - 400+ HL7s from BIDMC to DPH Immunization Registry

- Question: Is the nature of the discharge information from Tufts Medical Center to Network Health to the health plan or to the health providers?
 - Answer: The discharge information goes to the health plan for case management purposes.
- Hlway Implementation Grant Updates, Laurance Stuntz (Slide 4)
 - The Hlway Implementation Grant Program was created for converting current paper processes into Hlway transactions. 27 grants are planned to be awarded, and 5 are currently in review. In total, about 80 organizations will be participating in the grant program.
 - A full announcement is planned for the June HIT Council meeting. At that time, a full list of recipients and abstracts of plans will be available. The map on the slide shows breadth of primary organizations in the state.
 - The goal following the grants will be to show repeatable business process transactions through the Hlway, and show use cases (easy or not) to drive future adoption.

Phase 1 Consent

- Micky Tripathi provided a background on the differentiation between phase 1 and phase 2 of the Mass Hlway project to bring new members up to speed:
 - Phase 1 is essentially thought of as secure email, or a “push” approach. No demographic or clinical data repository. The holder of the information is in complete control of the how and when the information is sent. The concept is similar to faxing except provides a secure transaction method, audit trail, and provides shared services (provider directory, unambiguous addresses).
 - Phase 2 is the ability to query other organizations for information. The technical complexities of phase 2 also brings many legal and policy complexities (for example: consent processes, authentication processes and policies).
 - The two phases are discrete. An organization is not required to participate in phase 2; therefore, the policies are discrete between the phases.
- Consent for Phase 1 Services (Slide 6)
 - Chapter 224 requires that patient has ability to “opt-in” and “opt-out” of HIE, however the law is unclear in many aspects. See slide for details.
- Implementing Phase 1 Consent (Slide 7)
 - Please see slide for full details.
 - Organizations are looking at the Phase 1 consent process in different ways. Many organizations are already “opting-in” patients through a “consent to treat” document, which includes an opt-in for information sharing. Treatment within these organizations cannot happen unless the patient consents. Forms do not distinguish the mode of sharing information (i.e. only phone, but not fax).
 - Comment: If a patient does not sign the “consent to treat” document, would the organization still treat the patient (assuming it is bound to the consent to treat document)?

- Answer: In many cases the organization will not treat the patient. BIDMC is using this approach, and indicated that they couldn't remember the last time any patient has refused to sign the consent to treat document. If the patient refused, the patient would be directed to another organization for care.
- Comment: At Brigham and Women's Hospital, the organization decided not to honor specific requests to limit types of data sharing. This was done because not all practices and offices within the organization would be able to comply with such requests.
- Comment: Some information that will potentially be shared through the Hlway may not fall under HIPAA as PHI.
 - Response: Yes, but the assumption that most information on the Hlway would be PHI.
 - Comment: In order to be a Hlway participant, the organization must be a TPO organization and would potentially be sending PHI at any time.
- Organizations must update Notice of Privacy Practices (NPP) by September 2013, due to the HIPAA Omnibus rule.
- Comment: An advisory group member recently finished working on an update to provider guide for ONC. The HITECH act indicates that an HIE is now a business associate, which would require the nature of activity be defined in a business associate agreement (BAA).
 - Response: A BAA is part of the current participant agreement for the Hlway. A policy decision was made to make the Hlway a BAA before the HIPAA Omnibus rule was passed.
- Comment: It would be helpful to let patients know about BAA participation.
- Comment: An advisory group member expressed concern that opting-in may be integrated as a part of an organization's consent to treat process.
- Comment: At some organizations, patients are not specifically opting-in to the mode of sharing. It is how you define chapter 224, where it specifically says "HIE." Organizations are concerned if they don't call out HIE separately; they won't be able to share information in other ways if the patient says "no." If the HIE does not have a separate opt-in process, and a patient says "no" to a bundled opt-in agreement, the organization would not be able to send any information for TPO.
- Comment: If the Hlway doesn't build an opt-in policy that includes Phase 2 services now, when will it happen?
 - Answer: There are a few reasons why the consent policy being developed now will not include Phase 2 consideration:
 - The Hlway will likely make errors in the policy if including work on the query process now. The Hlway does not have the foresight at this point in time to consider all the possibilities of what may come up until further along into the phase 2 development process.
 - Organizations are operational right now with Phase 1, with more than a million transactions over the Hlway. A consent policy that covers Phase 1 services is needed now.

- There are organizations that will not be participating in Phase 2. The HIway can't bundle the consent policies for both phases because some organizations will remain in Phase 1, and will require a discrete policy.
- Question: Can the group get a legal interpretation of the language, from somebody from HIway Legal?
 - Answer: EOHHS has a legal interpretation, but cannot give legal advice. It is up to the organizations to interpret.
 - Comment: A framework should be created at the advisory group level, and then get approval from the state.
- The group had a discussion about obtaining examples from EOHHS as "acceptable approaches" without having EOHHS provide legal advice.
 - A suggestion was made to have EOHHS provide clarity, if a group of organizations were to get together to develop a standard approach.
 - A suggestion was made to ask for clarity in the statute from legislature. A request for clarity would likely take a lot of time to obtain. Group discussed the pros and cons of this approach.
 - EOHHS does recognize that clarity is needed.
- A template approach is not something that is ready for development. EOHHS needs to hear more concerns from a variety of organization levels in order to understand more and target an approach that would address concerns.
- The question is "what passes the permission test."

HISP-to-HISP Exchange

- HISP Definition (Slide 10)
 - The group reviewed the definition of a HISP for "table setting" purposes
 - The term HISP has no meaning outside of the Direct project, and no meaning beyond Directed exchange. It was a construct created as part of the Direct project, and is not an industry standard.
 - No separate formalized certification of HISPs from HITECH. Certifications cover EHRs, not HISPs.
 - The group reviewed what a HISP does and the three components a HISP provides. See slides for details.
 - Question: Do HISPs support transferring of data?
 - Answer: Yes, this is part of the Direct definition.
- Breakdown in the HISP model (Slide 11) - The group briefly reviewed the slide content.
- The original HIway HISP concept (Slide 12) – The group briefly reviewed the slide graphic and content.
- Need for HISP to HISP policies (slide 13)
 - The group reviewed the original HISP concepts, and discussed how the proliferation of HISP contracts and models have lead to the need for additional policy, contract, and technical complexity considerations for HIway integration.

- Some EHR vendors are placing “Toll Booths” on transactions that pass through the vendor’s HISP.
- Comment: The HIway should not want to block other organizations and HISPs from sharing information.
- Need to define policy and technical approaches to the variety of HISP models that exist in the market (Slide 14)
 - The slide diagram explains how participants may be able to connect to the HIway. The model involves HIway participants that connect directly with the HIway, and also demonstrates the variety of ways that organizations may connect through separate HISPs.
- Many types of organizations that HIway needs to consider (Slide 15).
 - The group reviewed the details of the different categories for how organizations may choose to connect to the HIway. The explanation shows how each organization will be an individual negotiation even when organization structures seem similar.
- Key areas to address in policy, contract, and technical requirements (Slide 16) - The group briefly reviewed the slide content.
- Is Direct Trust the answer (Slide 17) - The group briefly reviewed the slide content.
- What Direct Trust does not answer (Slide 18) - The group briefly reviewed the slide content.
- Question: How will Massachusetts policies translate for organizations and HISPs outside of Massachusetts?
 - Answer: This will be addressed in future discussions and is an important aspect to consider. Many state HIEs have a variety of regulations regarding participation for outside entities. The HIway will review and consider the practices of other state HIEs when determining the best approach.

Next steps

- Key points and comments synthesized and provided back to Advisory Group for final comments
- Presentation materials and notes to be posted to EOHHS website
- Next Legal & Policy Advisory Group Meeting – June 18, 2013, 2:30-4pm.
 - MMS Plymouth Conference room, or
 - Conference line: (866) 792-5314, Code: 7814347906#
- Next HIT Council – June 3, 2013, 3:30-5:00 One Ashburton Place, 21st Floor